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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 670

THE BOARD OF EDUCATION OF THE CITY OF BIRMINGHAM, *et al.*,

Petitioners,

v.

DWIGHT ARMSTRONG, *et al.*,

Respondents.

LINDA SUE GIBSON, *et al.*,

Petitioners,

v.

CAROLYN ELEANOR HARRIS, *et al.*,

Respondents.

LAWRENCE ROBERTS, *et al.*,

Petitioners,

v.

RALPH STELL, *et al.*,

Respondents.

PETITIONERS' REPLY

Petitioners, having this day received respondents' brief in opposition, respectfully submit for their reply:

I.

1. Timeliness as to all three cases arises from the authority of 28 USC §2401(c) to apply for writ of certiorari "at any time before judgment [in the Court of Appeals]."

2. Additionally, timeliness of the application as to *Gibson* is conceded. Since the single petition authorized by Rule 23(5) is timely in part, it must be timely as to all, since the issue is unitary in character.

3. Respondents argue without citation that this Court is limited under §2101(c) to consideration of the merits of the action of the District Court which the Court of Appeals is reviewing.

(a) There is no such limitation in the statutory language.

(b) It is §2101(c)—the 90 day provision—rather than §2101(c) which is limited to "judgment or decree" as opposed to the authority of this Court under §2106 over "judgment, decree, or order." The questioned rulings are clearly "orders" in this legislative classification.

4. There has been no delay. One or two such orders as are here complained of may be error, but they do not rise to the status of a judicial practice meriting extraordinary review. It is the cumulation of the four uniquely similar orders that creates the situation of "imperative public importance" described in Rule 20.

II.

The merits are not here in issue, and petitioners accordingly have been prejudiced by respondents' characterizations and comments on the lower court rulings. If the

underlying issues are deemed pertinent to the Court's decision, petitioners pray an opportunity to be heard in opposition.

III.

The absence of any citation of precedent or textual support in respondents' brief for the assertion of substantially unlimited writ powers in Courts of Appeals confirms the conclusion of our own research that no orders of the character of the four here sought to be reviewed have ever previously been issued by any Court of the United States.

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January 17, 1964